

Internal Revenue Service
District Director

Department of the Treasury

Post Office Box 1680, GPO
Brooklyn, NY 11202

Date: SEP 25 1989

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(4) of the Internal Revenue Code.

The Declaration of Trust was made [REDACTED] and filed with [REDACTED].

Article I- Section 1. Declaration of Trust and Purpose. The Trustees hereby declare that they hold all of the rights and power in and with respect to the common areas and facilities (hereinafter referred to as the "Common Elements") of the Condominium established by the Master Deed, as hereinafter defined, which are by virtue of provisions of Chapter [REDACTED] of the [REDACTED] General Laws conferred upon or exercisable by the organization of unit owners of said Condominium, and all other rights, interests, powers duties, and responsibilities granted to them as trustees hereunder or under said Master Deed, as joint tenants with right of survivorship, in trust to exercise, manage and administer the same and to receive the income thereof for the benefit of the owners of record from time to time of the units of said Condominium (said Units being hereinafter referred to as the "Units" and said Owners being hereinafter referred to as the "Unit Owners"), according to the schedule of undivided beneficial interest in the Common Elements (hereinafter referred to as the "Beneficial Interests") set forth in Section 3.1 hereof and in accordance with the provisions of said Chapter [REDACTED], this Trust being the organization of the Unit Owners established pursuant to the provisions of Section 10 of said Chapter [REDACTED] for the purposes therein set forth.

The common Elements as defined in the Master Deed section 5 consist of the Condominium, exclusive of the Units, including, without limitation, the following:

(a) The Land described in Paragraph 2 above, subject to the rights and easements as set forth herein;

(b) The foundation, columns, girders, beams, supports and roofs of said building, and exterior and interior walls within said Building (other than any portion of said exterior or interior walls included in the Units as specified in Paragraph 4 above);

(c) Installations of services such as power, light, gas, hot and cold water, heating, air conditioning and waste disposal, including all equipment attendant thereto (but not including equipment contained within and servicing a single Unit);

(d) All conduits, chutes ducts, plumbing, wiring, flues and other facilities for the furnishing of utility services or waste removal which are contained in portions of said Building contributing to the structure or support thereof, and all such facilities contained within any Unit which serve parts of said Building other than the Unit within which such facilities are contained, together with an easement of access thereto for maintenance, repair and replacement;

(e) All common equipment wherever located in, on, or around said Building;

(f) The parking spaces outside of said Building, subject to the provisions of Paragraph 6 below; provided, however, that each Unit Owner shall have an easement for the exclusive use of the parking space(s) outside of said Building which may be granted in the first Unit Deed to such Unit.

(g) The yards, lawns, gardens, walkways, passageways and the improvements thereon and thereof, including walls, bulkheads, railings and steps;

(h) All other apparatus and installations existing in or on said condominium for common use, or necessary or convenient to the existence, maintenance or safety of said Condominium; and

(i) All other items listed as such in Chapter [REDACTED] and located on said Condominium.

The Common Elements shall be subject to the provisions hereof and of the Trust, and to the Rules and Regulations promulgated pursuant to said Trust with respect to the use thereof, and to the assignments of and grants of easements for parking spaces outside of said Building.

And as defined in the Declaration of Trust

Article II Section 2.8 "Common Expenses" shall mean the expenses of administration, operation, maintenance, repair or replacement of the Common Elements, expenses declared Common Expenses herein or by Chapter [REDACTED], and betterment and other assessments referred to in Chapter [REDACTED] which are assessed to the Trustees.

As stated in your application "the Trust was established solely for the general maintenance of common property at [REDACTED] on behalf of the Unit owners. The Trust collects dues and assessments from the Unit owners which are used solely for the expense of general maintenance and care of the property (eg. lawn care, snow removal, common lighting ,etc)."

Section 501(c)(4) of the Internal Revenue Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

The concept of social welfare implies a service or program directed at benefitting the community rather than a private group of individuals.

In *Commissioner v. Lake Forest, Inc.*, 305 F. 2d 814 (4th Cir. 1962), the court held that a cooperative housing corporation was not exempt as a social welfare organization under section 501(c)(4) of the Code since its activities were of the nature of an economic and private cooperative undertaking.

Rev. Rul. 69-280, 1969-1 C.B. 152, holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt from Federal income tax under section 501(c)(4) of the Code.

Revenue Rule 74-17, 1974-1 C.B. 130, holds that An organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code.

By virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property in the condominium. In addition, condominium ownership necessarily involves ownership in common by all condominium unit owners of great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners.

Since the organization's activities are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare. Accordingly, it does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.

It appears that your organization may elect to file under section 528 to receive certain tax benefits which, in effect, permit the exclusion of exempt function income from gross income. The election to file under section 528 is to be made by filing Form 1120-H, U.S. Income Tax Return for Homeowners Associations. However, if you do not elect to file under section 528, you are required to file Federal income tax returns on Form 1120.

We have also determined that you fail to qualify for exempt status under any other subsection of IRC 501(c).

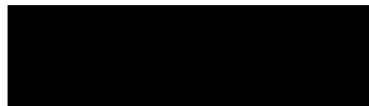
You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time, this determination will become final.

Sincerely yours,

A solid black rectangular box used to redact the signature of the District Director.

District Director

Enclosure: Publication 892